

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition Nos.:** 34-002-17-1-5-00428-17  
34-002-17-1-5-02102-17  
34-002-17-1-5-02105-17  
**Petitioner:** Jessica Markiewicz – Jessica PA, LLC  
**Respondent:** Howard County Assessor  
**Parcel Nos.:** 34-03-27-327-001.000-002  
34-03-27-326-003.000-002  
34-03-27-407-001.000-002  
**Assessment Year:** 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated her 2017 assessment appeals with the Center Township Assessor. On October 26, 2017, the Howard County Property Tax Assessment Board of Appeals (PTABOA) issued decisions denying the Petitioner any relief.
2. The Petitioner timely filed Petitions for Review of Assessment (Form 131s) with the Board and elected the Board’s small claims procedures.
3. On March 8, 2018, the Board’s Administrative Law Judge (ALJ) Joe Stanford held a consolidated hearing. Neither the Board nor the ALJ inspected the property.
4. Jessica Markiewicz appeared *pro se*. Attorney Thomas Hilligoss appeared for the Respondent. Paul Markiewicz was sworn as a witness for the Petitioner. Center Township Assessor Shelia Pullen and Center Township Deputy Assessor Lisa England were sworn as witnesses for the Respondent.<sup>1</sup>

**Facts**

5. The properties under appeal consist of three vacant lots located at 821 Silver Charm Drive, 913 Silver Charm Drive, and 2718 War Admiral Trail all located in Kokomo.
6. PTABOA determined the following assessed values:

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<sup>1</sup> Howard County Assessor Melinda Heady was present but was not sworn.

Address	Land
821 Silver Charm Drive	\$17,700
913 Silver Charm Drive	\$17,700
2718 War Admiral Trail	\$17,500

7. The Petitioner requests the developer’s discount be applied for 2017.

**Record**

8. The official record for this matter is made up of the following:

- a. A digital recording of the hearing,
- b. Exhibits:

The Petitioner offered the following exhibits:

- Petitioner Exhibit 1: “Petitioner’s timeline,”
- Petitioner Exhibit 2: Beacon printouts for the subject properties,
- Petitioner Exhibit 3: Respondent’s first request for production of documents, dated February 9, 2018,
- Petitioner Exhibit 4: Certificate of Organization and Articles of Organization, dated August 12, 2015, Operating Agreement for Jessica PA, LLC, dated August 31, 2015,
- Petitioner Exhibit 5: Business entity report for Jessica PA, LLC, dated November 9, 2017,
- Petitioner Exhibit 6: Jessica PA, LLC, meeting minutes from 2015-2018,
- Petitioner Exhibit 7: Indiana Code § 28-1-1-3, Ind. Code § 6-1.1-4-12, article entitled “Land Developer: Job Description, Duties and Salary,” and article entitled “How to get started in Property Development,”
- Petitioner Exhibit 8: Property information for 53 properties valued utilizing the land developer’s discount,
- Petitioner Exhibit 9: Petitioner’s requests for review from the Center Township Assessor.

The Respondent offered the following parcel specific exhibits:

821 Silver Charm Drive:

- Respondent Exhibit A: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) dated June 21, 2017,
- Respondent Exhibit B: PTABOA minutes dated October 18, 2017,

Respondent Exhibit C: Notification of Final Assessment Determination (Form 115) dated October 26, 2017,  
Respondent Exhibit D: Form 131 dated November 27, 2017,  
Respondent Exhibit E: 2017 subject property record card,  
Respondent Exhibit F: Beacon printout for the subject property,  
Respondent Exhibit G: Verified application to Howard County Assessor for developer's discount under Ind. Code § 6-1.1-4-12.

913 Silver Charm Drive:

Respondent Exhibit A: Form 134 dated July 2, 2017,  
Respondent Exhibit B: Form 115 dated October 26, 2017,  
Respondent Exhibit C: PTABOA minutes dated October 18, 2017,  
Respondent Exhibit D: Form 131 dated November 27, 2017,  
Respondent Exhibit E: 2017 subject property record card,  
Respondent Exhibit F: Beacon printout for the subject property,  
Respondent Exhibit G: Verified application to Howard County Assessor for developer's discount under Ind. Code § 6-1.1-4-12.

2718 War Admiral Trail:

Respondent Exhibit A: Form 134 dated July 2, 2017,  
Respondent Exhibit B: Form 115 dated October 26, 2017,  
Respondent Exhibit C: PTABOA minutes dated October 18, 2017,  
Respondent Exhibit D: Form 131 dated November 27, 2017,  
Respondent Exhibit E: 2017 subject property record card,  
Respondent Exhibit F: Beacon printout for the subject property,  
Respondent Exhibit G: Verified application to Howard County Assessor for developer's discount under Ind. Code § 6-1.1-4-12.

- c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

**Burden of Proof**

9. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax

year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
12. The parties agree the assessed values of each parcel under appeal increased by more than 5% from 2016 to 2017 and the Respondent accepted the burden of proof. Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the burden rests with the Respondent. To the extent the Petitioner seeks an assessment below the previous year’s level, she has the burden of proving she is entitled to a lower value.

### **Objections**

13. The Respondent objected to Petitioner’s Exhibit 8, the 53 Beacon printouts of properties receiving the developer’s discount, on the grounds of relevancy. Mr. Hilligoss argued the Petitioner failed to show how the properties are owned or if the owners have experience in developing land. In response, Mr. Markiewicz argued the exhibit indicates the “trending” of land on the west side of Kokomo and the “development rate” given by the assessor’s office.<sup>2</sup> The ALJ deferred ruling on the objection.
14. The objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board overrules the objection and Petitioner’s Exhibit 8 is admitted.

### **Contentions**

15. Summary of Respondent’s case:
  - a. The subject properties are correctly assessed. The assessments increased in 2017 due to the county’s annual trending. *England testimony.*
  - b. The Petitioner is seeking to have the developer’s discount re-applied to the subject properties. In making her case, she claims she is a “land developer.” According to

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<sup>2</sup> The Petitioner used the term “trending” when referring to land values or land prices.

- Ind. Code § 6-1.1-4-12(a), a “land developer” is a “person that holds land for sale in the ordinary course of the person’s trade or business.” Jessica PA, LLC, does not file tax returns, has no bank account, and has no business equipment associated with land development. This indicates land development is not an ordinary course of business for Jessica PA, LLC. According to Ms. Markiewicz, her experience as a land developer includes the purchase of land for her home, designing her home, and aiding with the general contracting. She testified that she is a novice in the business of land development. These facts illustrate Jessica PA, LLC, and Ms. Markiewicz “operate as the same person with no distinct differences” further indicating the Petitioner is not a land developer. *Hilligoss argument; England testimony; J. Markiewicz testimony.*
- c. According to statute, land in inventory may not be reassessed until the next assessment date after the land developer, or a successor land developer, transfers it to a person that is not a land developer. The Respondent “interprets” the statute to indicate that once a land developer, or a successor developer, sells to a non-developer the developer’s discount is removed permanently. The Petitioner purchased all three parcels under appeal from a non-developer. As of the date of this hearing, the two lots on Silver Charm Drive have never been offered for sale and the War Admiral Trail property was offered for sale only after the Petitioner filed her appeal. *Hilligoss argument (citing Ind. Code § 6-1.1-4-12(i)); England testimony.*
  - d. The property located at 821 Silver Charm Drive was originally in the possession of developer Old Jefferson Woods, LLC, (Jefferson Woods). Jefferson Woods sold the property to a successor developer Liberty Development of Kokomo, LLC, (Liberty Development) on September 22, 2009. Liberty Development sold the property to the individuals Larry and Jenny Daily on August 27, 2015. Finally, the Daily’s sold the property to Jessica PA, LLC, on April 5, 2017. The Respondent removed the developer's discount from this property for the January 1, 2016, assessment date. *England testimony; Resp’t Ex. E, F.*
  - e. The property located at 913 Silver Charm Drive was originally in the possession of developer Jefferson Woods. Jefferson Woods sold the property to a successor developer Liberty Development on September 22, 2009. Liberty Development sold the property to individuals Brent McClure and Lorene Wolverton on April 2, 2014. Jessica Markiewicz acquired the property on August 22, 2014, and proceeded to deed the lot to Jessica PA, LLC, on September 8, 2015. The Respondent removed the developer’s discount from this property for the March 1, 2015, assessment date. *England testimony; Resp’t Ex. E, F.*
  - f. The property located at 2718 War Admiral Trail was also originally in the possession of developer Jefferson Woods. Jefferson Woods sold the property to individual Theresa Opelt on September 22, 2009. Ms. Opelt sold the property to Jessica Markiewicz on April 30, 2015, and she deeded the property to Jessica PA, LLC, on September 8, 2015. The Respondent admits this property was erroneously assessed from 2009 to 2014 because the developer’s discount should have been removed for

the March 1, 2010, assessment date. This error was discovered when the property was transferred in 2015. When the Petitioner initiated an appeal in 2015, a “township conference” concluded the assessed value should be reduced due to excess frontage. *England testimony; Resp’t Ex. E, F.*

- g. Ms. Markiewicz testified that all three properties were purchased from individuals, not from developers. *Hilligoss argument; J. Markiewicz testimony.*

16. Summary of Petitioner’s case:

- a. The properties under appeal should all be eligible for the developer’s discount. Jessica PA, LLC, was “organized to own, manage and develop real estate and to do all things necessary to carry on the purpose of the land development business, to include any and all acts necessary which are lawful for a limited liability company.” *J. Markiewicz testimony; Pet’r Ex. 1, 4.*
- b. After purchasing the property located on War Admiral Trail, Ms. Markiewicz contacted the assessor’s office inquiring if she formed a LLC would the lot receive the “developmental rate.”<sup>3</sup> Based upon the advice she received from the assessor’s office she purchased additional lots. However, upon receiving her taxes she discovered the developer’s discount had been removed and the only answer the assessor’s office was able to provide was they did not believe Ms. Markiewicz was a developer. *J. Markiewicz testimony; Pet’r Ex. 1.*
- c. According to Ind. Code § 28-1-1-3, a financial institution is an “investment company organized or recognized under the laws of this state and includes licensees.” Jessica PA, LLC, was organized under the laws of the State of Indiana for the purpose of land development. The LLC has Articles of Incorporation and minutes from meetings held from 2015 to 2018 as required by the State of Indiana. *P. Markiewicz testimony; Pet’r Ex. 6, 7.*
- d. Additionally, Ind. Code § 6-1.1-4-12 allows a financial institution to hold land as inventory, including lots. Jessica PA, LLC, acquired the lots three to four years ago and continues to hold them as part of its inventory. *P. Markiewicz testimony; Pet’r Ex. 7.*
- e. According to “websites” land developers acquire property, assess the property’s value, and trace economic trends and risks. Additionally, land developers make projections regarding potential profitability based on population growth, traffic patterns and local taxes. The Petitioner argues that “a land developer is an investor and an investor is a land developer” and that “a developer is a person who commits their equity and talents into converting land from its current use to a higher and better use.” *P. Markiewicz testimony; Pet’r Ex. 7.*

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<sup>3</sup> According to Ms. Markiewicz, the employee she spoke to named Weston no longer works in the assessor’s office.

- f. The Petitioner purchased the subject properties after the original developer went bankrupt in 2009. In purchasing these lots “she was taking on a higher risk.” The Petitioner’s residential development is just a little over three years old “so it is still in its infancy stage.” These properties were not purchased for the purpose of flipping them for a quick profit, instead she continues to maintain them. *P. Markiewicz testimony.*
- g. The Petitioner presented property information for 53 various properties receiving the developer’s discount. This random sample indicates that individual owners, LLCs, and revocable trusts in Kokomo are receiving the reduced “developmental” rate not just land developers. Thus, based on all the evidence presented the three lots under appeal should also be entitled to the developer’s discount. *P. Markiewicz testimony; Pet’r Ex. 8.*

### Analysis

- 17. The Respondent failed to make a prima facie case the 2017 assessments were correct.
  - a. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2017 assessments, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
  - c. The burden was on the Respondent and she could have used any of the above mentioned methods to establish the existing assessments are correct. The Respondent failed to offer any substantial market-based evidence to support the current assessments of the three properties under appeal. Because she failed to meet her burden of proof, the 2017 assessments must be reduced to their previous year’s level. The assessment of the 821 Silver Charm Drive property must be reduced to \$15,300. The assessment of the 913 Silver Charm Drive property must be reduced to \$14,200. And the assessment of the 2718 War Admiral Trail property must be reduced to \$14,400.

- d. The Board's inquiry does not end here because the Petitioner claims to be entitled to the developer's discount. As previously explained, the Petitioner has the burden of proving it is entitled to an additional reduction.
- e. The developer's discount is based on Ind. Code § 6-1.1-4-12, which provides in part:
  - (a) As used in this section, "land developer" means a person that holds land for sale in the ordinary course of the person's trade or business. The term includes a financial institution (as defined in IC 28-1-1-3(1)) if the financial institution's land in inventory is purchased, acquired, or held for one (1) or more of the purposes established under IC 28-1-11-5(a)(2), IC 28-1-11-5(a)(3), and IC 28-1-11-5(a)(4).
  - (b) As used in this section, "land in inventory" means:
    - (1) a lot; or
    - (2) a tract that has not been subdivided into lots; to which a land developer holds title in the ordinary course of the land developer's trade or business.
  - ...
  - (e) Except as provided in subsections (i) and (j), if:
    - (1) land assessed on an acreage basis is subdivided into lots; or
    - (2) land is rezoned for, or put to, a different use; the land shall be reassessed on the basis of its new classification.
  - (f) If improvements are added to real property, the improvements shall be assessed.
  - (g) An assessment or reassessment made under this section is effective on the next assessment date.
  - ...
  - (i) Subject to subsection (j), land in inventory may not be reassessed until the next assessment date following the earliest of:
    - (1) the date on which title to the land is transferred by:
      - (A) the land developer; or
      - (B) a successor land developer that acquires title to the land; to a person that is not a land developer;
    - (2) the date on which construction of a structure begins on the land; or
    - (3) the date on which a building permit is issued for construction of a building or structure on the land.
  - (j) Subsection (i) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

- f. The term “developer’s discount” is somewhat misleading. The statute was amended in 2006, but the intent as explained in *Howser Development v. Vienna Twp. Ass’r*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005), and *Aboite Corp. v. State Bd. of Tax Comm’rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001), remains the same: encouraging developers to buy farmland, subdivide it into lots, and resell the lots. The encouragement comes by providing that a land developer’s land in inventory is not to be reassessed until after title is transferred to somebody who is not a developer, or construction begins on the land, or a building permit is issued for construction on the land. Ind. Code § 6-1.1-4-12(i). Agricultural land values tend to be lower. Consequently, where land previously was assessed with a lower agricultural land value, allowing it to retain that lower valuation for a longer time generally is an encouragement or benefit. However, Ind. Code § 6-1.1-4-12 does not dictate agricultural land value for a property where the prior assessment was not based on agricultural land value. Rather than specifying agricultural land value, subsection 12(i) provides a limitation on when qualifying land is allowed to be reassessed and, until one of the specified events happens, the prior assessment classification is maintained.
- g. Evidence indicates the property located at 821 Silver Charm Drive was sold by the land developer to an individual on August 27, 2015, thus the developer’s discount was removed for January 1, 2016, assessment date. Jessica PA, LLC, purchased the lot on April 5, 2017, more than a year after the developer’s discount was removed.
- h. The property located at 913 Silver Charm Drive was sold by the land developer to an individual on April 2, 2014, and the developer’s discount was removed for the March 1, 2015, assessment date. This lot was deeded to Jessica PA, LLC, on September 8, 2015, after the developer’s discount was removed.
- i. Finally, the property located at 2718 War Admiral Trail was sold by the land developer to an individual on September 22, 2009. However, through an omission by the assessor’s office from 2009 through 2014 the developer’s discount was not removed until the March 1, 2015, assessment date. This lot was deeded to Jessica PA, LLC, on September 8, 2015, after the developer’s discount was removed.
- j. There is no evidence indicating the 2015 and 2016 reassessments of the three lots under appeal were not proper and in accordance with the new classification of the land. As such, whether Jessica PA, LLC, qualifies as a land developer is irrelevant, because Ind. Code § 6-1.1-4-12 contains no provision for reinstating a classification after the classification was properly changed. Plus, there is no indication that the land classifications on the properties were changed for the 2017 assessment.

- k. Even if the Board found the Petitioner's three lots qualified for developer's discount, Ind. Code § 6-1.1-4-12 does not dictate a specific land value.<sup>4</sup> The statute requires that the prior assessment classification is to be maintained. Thus, Petitioner's testimony and evidence are not enough to make a prima facie case for reclassifying the three properties and reducing the assessments below the 2016 level.

### **Conclusion**

18. The Respondent failed to make a prima facie case that the 2017 assessments were correct. Therefore, the 2017 assessments must be reduced as follows: 821 Silver Charm Drive must be reduced to the 2016 level of \$15,300; 913 Silver Charm Drive must be reduced to the 2016 level of \$14,200; and 2718 War Admiral Trail must be reduced to the 2016 level of \$14,400. The Petitioner failed to make a prima facie case for any reductions below the 2016 level.

### **Final Determination**

In accordance with these findings and conclusions, the 2017 assessments must be changed.

ISSUED: December 3, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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<sup>4</sup> The Petitioner never made any arguments regarding what specific value should be attached to each property nor did she argue the purchase price of the lots should be viewed as probative because no evidence was presented regarding the acquisition of the properties.

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.